This case is unique as are most of the cases under this rapidly growing subject. The police power embraces the protection of the lives, health and property of the citizens, the maintenance of the good order and quiet of the community, and the preservation of the public morals. *Beer Co. v. Mass.*, 97 U. S. 25; *Thorpe v. R. Co.*, 27 Vt. 149. Of course it must be used as a police power and not as a pretext to avoid unconstitutionality. *R. Co. v. Hoboken*, 41 N. J. L. 71; *Mayor v. R. Co.*, 32 N. Y. 261. As to what does not lie in the police power, it is easier to distinguish the separate cases as they arise than to formulate a general rule. For example, a grant to registered pharmacists of the right to sell patent or proprietary medicines, without requiring them to make any inspection or examination of the same, but denying such right to other persons or firms, is unconstitutional. *Noel v. People*, 188 Ill. 587.

CORPORATIONS—MUNICIPAL—DEFECTIVE SIDEWALK—CONSTRUCTIVE NOTICE. —CITY OF OTTAWA v. HAYNE, 73 N. E. 384 (ILL.).—*Held*, that in an action against a city for injuries caused by an obstructed sidewalk, plaintiff may show by a watchman employed by private persons that the obstruction was observed by him, in order to prove constructive notice to the city.

The acts and declarations of private persons as to the unsafe condition of a sidewalk are admissible to show notoriety. *Chase v. Lowell*, 151 Mass. 422; *McGrail v. Kalamazoo*, 94 Mich. 52. But in *Hinckley v. Somerset*, 145 Mass. 326, it is held that a conversation between a person previously injured at the same place and others, not officers of the town, is inadmissible. In showing constructive notice of defect, the distance from the city hall may be proved. *Masten v. Troy*, 50 Hun 485. The fact that no repairs have been made on the walk for a long time is also competent evidence on this point. *Alberts v. Vernon*, 96 Mich. 549. It must appear, however, that the city had reason to anticipate the defect. *Stellwagen v. Winona*, 54 Minn. 460; *Lincoln v. Pirner*, 59 Neb. 634. A municipality may be charged with constructive notice even though the fact of the defect has not become notorious. *Pomfrey v. Saratoga Springs*, 104 N. Y. 459; *Anderson v. Albion*, 64 Neb. 280.

CORPORATIONS—MUNICIPAL—EXCAVATIONS OF STREETS—LATERAL SUPPORT. —DAMKOEHLER v. MILWAUKEE, 101 N. W. 706 (WIS.).—*Held*, that where a city negligently excavates a street so as to take away the lateral support of an adjoining lot, thereby causing the soil to fall in, it is liable to the owner of the lot for such injury.

It has been held that there is no liability on the part of a city for taking away lateral support so as to injure an abutting owner, for it is not a taking of private property for public use. *Rome v. Omberg*, 28 Ga. 46. Other cases hold that a city is liable to the same extent as an individual. *Stearnes v. Richmond*, 88 Va. 992; *Nichols v. Duluth*, 40 Minn. 389. The true rule seems to be that the city is not liable when it makes the excavations with ordinary skill and care. *Quincy v. Jones*, 76 Ill. 231; but is liable if it takes away the support negligently, thereby causing an injury to the adjoining owner, *Parke v. Seattle*, 5 Wash. 1; the test of the city's liability being the manner in which it does the work. *Wright v. Wilmington*, 92 N. C. 156.

CORPORATIONS—PRIVATE—AGREEMENT TO SUBSCRIBE FOR STOCK.—WOODS MOTOR VEHICLE CO. v. BRADY, 73 N. E. 674 (N. Y.).—The defendant subscribed to the stock of a corporation to be organized to "deal" in automobiles. A corporation was subsequently organized for the purpose of

"manufacturing, leasing, purchasing and selling automobiles" and other vehicles. *Held*, that the subscription was not enforceable by such corporation, where the defendant was not one of the incorporators and refused to pay his subscription, and did not subscribe for the stock, nor in any way ratify the subscription agreement. Gray, Bartlett and Haigh, JJ., *dissenting*.

Under conditions similar to those in this case, some courts have held that any change is sufficient to release a man from his agreement to subscribe, because he has the right to say *non haec in foedera veni. Zabriski v. Ry. Co.*, 18 N. J. Eq. 178; *Central Ry. Co. v. Collins*, 40 Ga. 582. Or as expressed in *U. L. & C. v. Towne*, 1 N. H. 44, an assent to amendments extending the objects, increasing the powers, or enlarging the liabilites of the corporation is not to be presumed, but must be expressly shown. But the general view is that the change must be material, radical or fundamental. *Haskell v. Worthington*, 94 Mo. 560; *M. T. Corp. v. Swan*, 10 Mass. 384. Thus a mere change of name does not release the subscriber. *Glenn v. Springs*, 26 Fed. 238. But he is released if the change effects the identity of the stock. *James v. C. H. & D. R. Co.*, 2 Dis. (O.) 261. So a corporation formed for the "purpose of producing electricity and power," cannot maintain an action on a subscription to a corporation to be formed "for the purpose of furnishing the incandescent system of electric lighting." *M. E. L. & P. Co. v. Johnson*, 109 Cal. 192.

EVIDENCE—CRIMINAL LAW—LETTER FROM ACCUSED TO WIFE.—HAMMONS V. STATE, 84 S. W. 718 (ARK.).—*Held*, that a letter from the accused to his wife, intercepted and never delivered to her, is admissible. Battle and McCulloch, JJ., *dissenting*.

Whatever has come to the knowledge of either husband or wife by means of the confidence inspired by the marriage relation cannot afterwards be divulged in testimony, even if the other party be dead. 1 *Greenl., Ev.*, §§ 254, 334, 337; *Jacobs v. Hesler*, 113 Mass. 157; *Aveson v. Kinnaird*, 6 East 188. But a private conversation between husband and wife, who thought no one overheard them, may be testified to by a concealed listener. *Com. v. Griffin*, 110 Mass. 181; *State v. Center*, 35 Vt. 378. There is some conflict among authorities as to whether or not letters between husband and wife, found in the possession of a third party, are admissible in evidence against either. The better rule would seem to be that such letters in the hands of a third person, no matter how he obtained them, are not privileged, but may be admitted in evidence. *Wharton, Crim. Ev.*, § 398; *Com. v. Caponi*, 155 Mass. 534; *State v. Mathers*, 64 Vt. 101. But see *contra*, 1 *Greenl., Ev.*, § 254 a; *Reg. v. Pamenter*, 12 Cox Cr. Cas. 177; *Mitchell v. Mitchell*, 80 Tex. 101.

EVIDENCE—DECLARATION OF AGENT.—CAMPBELL V. EMSLIE, 91 N. Y. SUPP. 1069.—*Held*, that the declarations of an agent may be admissible in evidence though not made during the continuance of the agency or in regard to a transaction pending at the time. Hatch and Laughlin, JJ., *dissenting*.

Admissions, to be admissible, must have been made by the agent while acting within the real or apparent scope of authority, *Charter v. Lane*, 62 Conn. 121; *Thill v. Perkins*, 63 Conn. 478; during the continuance of the agency, *Cooley v. Norton*, 4 Cush. 93; *Dean v. Aetna L. Ins. Co.*, 62 N. Y. 642; in regard to a transaction pending at the very time. *Rockwell v. Taylor*, 41 Conn. 59; *Blanchard v. Blackstone*, 102 Mass. 343. Admissions